

Article XXX Neighborhood Conservation Districts

1. PURPOSES

(a) This Bylaw enables the establishment of Neighborhood Conservation Districts (NCDs) in the Town of Lexington for the following purposes:

- (i) to recognize that the Town of Lexington contains unique and distinctive neighborhoods and areas which contribute significantly to the overall character and identity of the town and which are worthy of preservation and protection. The Town aims to preserve, protect and enhance these neighborhoods through the establishment of Neighborhood Conservation Districts;
- (ii) to promote conservation and preservation of existing buildings; to encourage new construction that will complement and be compatible with existing Buildings, Structures, Settings and neighborhood character; and to foster appropriate reuse and upgrading of Buildings and Structures in designated neighborhoods;
- (iii) to provide residents and property owners with the opportunity to participate in planning the future of their neighborhoods;
- (iv) to promote wider public knowledge about and appreciation for Lexington's distinctive neighborhoods and their Buildings, Structures and Settings;
- (v) and by furthering these purposes, to enhance public welfare by offering current and potential Lexington residents a variety of neighborhoods from which to choose, thereby making the Town a more attractive and desirable place in which to live and work.

(b) An NCD designation is intended to enable the neighborhood and the buildings within it to be able to adapt to meet the needs of current and future owners, while conserving the neighborhood's distinctive character.

(c) An NCD designation identifies a neighborhood and specifies its distinctive architectural, aesthetic, historical, cultural, political, economic and/or social contributions to the development of the Town of Lexington's character.

2. DEFINITIONS

Alteration -- any change to the exterior of a Building, Structure or Setting, or part thereof, including construction, demolition, moving, reconstruction, rehabilitation, removal, replication, restoration, or similar activities, and/or significant changes to the site itself.

Building -- a combination of materials forming a shelter for persons, animals or property.

Building Commissioner -- the Building Commissioner of the Town of Lexington.

Certificate of Compatibility -- a form created and issued by the NCD Commission under this Bylaw, which states that a proposed plan for Construction and/or Alterations to a Building, Structure or Setting within an NCD meets the Regulations and Guidelines adopted for that NCD, and which is signed by that NCD Commission's Chair or other officially delegated person responsible for its issuance. An application

for a building or demolition permit must be accompanied by this Certificate, if the scope or nature of such projects is covered under the Regulations and Guidelines.

Certificate of Non-Applicability – a form created and issued by the NCD Commission under this Bylaw, which states that proposed changes to a Building, Structure, or Setting within an NCD are not subject to review under this bylaw, and which is signed by that NCD Commission's Chair or other officially designated person. An application for a building permit or demolition permit must be accompanied by this Certificate, if the scope or nature of such projects is exempt under the Regulations and Guidelines.

Certificate of Hardship – a form created and issued by the NCD Commission under this Bylaw, which states that owing to conditions especially affecting the Building or Structure but not affecting the NCD generally, failure to issue a Certificate of Compatibility would result in a substantial hardship to the applicant and that such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of the NCD, and which must be signed by that NCD Commission's Chair or other officially designated person. An application for a building permit or demolition permit must be accompanied by this Certificate, if the scope or nature of such projects is covered under the Regulations and Guidelines.

Construction – the erection of a new Building or Structure.

Demolition – the act of pulling down, destroying, removing or razing a Building and/or Structure or any substantial portion thereof or the act of commencing the work of total or substantial destruction with the intent of completing the same. "Demolition" as used herein shall be deemed to include demolition by neglect.

Demolition by Neglect - A process of ongoing damage to the fabric, viability and/or functionality of an unoccupied building leading towards and/or causing its eventual demolition due to decay and/or structural failure and/or severe degradation over a period of time as a result of a general lack of maintenance, and/or failure to secure the building from pests or vandals, and/or failure to take reasonable measures to prevent the ingress of water, snow, ice, and wind through the roof, walls, or apertures.

Exterior Architectural Features – such portions of the exterior of a Building or Structure, including but not limited to the architectural style, and general arrangement and Setting thereof; the type and texture of exterior building materials; and the type and style of windows, doors, lights, signs and other appurtenant fixtures.

Guidelines – advisory guidelines, duly adopted under this Bylaw, to guide the review of proposed Construction and/or Alteration within a particular designated NCD.

Historical Commission -- the Lexington Historical Commission.

Neighborhood Conservation District or NCD - a district approved by Town Meeting for those properties within a NCD Area that are not Opted Out Properties.

NCD Area –the total geographic area covered by all of the properties studied under each Section 3 Study.

Neighborhood Conservation District (NCD) Commission - a public body established under this Bylaw with the authority to review and approve or disapprove proposed Construction and/or Alteration to a Building, Structure or Setting in the NCD for compatibility with the Design Guidelines established for that District. A separate Neighborhood Conservation District Commission shall be established for each designated NCD.

Opted Out Properties – Properties in NCD Areas which shall be excluded from an NCD designation in accordance with Section 3(e).

Petition - a document signed by at least 10 Property Owners, one signature per property, of a neighborhood stating the desire of the Property Owners to form a Neighborhood Conservation District, and including the supporting materials required to initiate the study process by which an NCD is established.

Planning Board -- the Lexington Planning Board.

Property Owner - the owner of a property as listed on the Town of Lexington's property tax rolls at the relevant time.

Regulations – mandatory regulations which describe the authority vested in the NCD Area's NCD Commission, duly adopted under this Bylaw.

Report - the document prepared by a Study Committee recommending favorable or unfavorable action on a Petition to establish an NCD.

Setting - the characteristics of the site of a Building, Structure or undeveloped property, including, but not limited to, placement and orientation of the Building or Structure, and vegetation and landscaping.

Structure - a combination of materials other than a building, including a sign, fence, wall, terrace, walk or driveway.

Study Committee - the group of five people appointed to review, recommend or reject a Petition to create an NCD, as described in Section 3(c), or amend an existing NCD, as contemplated in Section 3(i).

Temporary Structures – structures which have no permanent foundation, and are intended to remain on a property only for a brief period of time, not to exceed 60 days.

3. DESIGNATION OF NEIGHBORHOOD CONSERVATION DISTRICTS

(a) To be considered for designation as an NCD, a neighborhood must satisfy the following criteria:

(i) The proposed NCD Area as a whole constitutes a recognizable neighborhood which has a distinctive character, *and*

(ii) the proposed NCD Area contains Buildings and/or Structures and/or Settings that are significant to the architectural, aesthetic, cultural, political, economic and/or social history of Lexington; *or*

(iii) the proposed NCD Area has generally cohesive features, such as the scale, size, type of construction, materials or style or age of its Buildings and Structures, and/or its land use patterns and landscaping.

(b) The designation of an NCD shall be initiated by Petition of neighborhood Property Owners, submitted to the Historical Commission and containing signatures of at least 10 Property Owners electing to be included in the proposed NCD Area, one signature per property, which petition shall also include:

(i) a general statement of the architectural, aesthetic, cultural, political, economic, social and/or historic qualities of the proposed NCD Area which make it appropriate for NCD designation, *or*

(ii) a description of the cohesiveness of the proposed NCD Area in terms of scale, size, type of construction, materials or style or age of its Buildings and Structures, and/or its land use patterns and landscaping; *and*

(iii) a preliminary map of the proposed NCD Area, and

(iv) a general outline of the scope of the Regulations and Guidelines that would be proposed for the NCD.

(c) Upon receipt of a Petition for NCD designation, the Historical Commission shall within 30 days hold a public hearing, notifying all Property Owners in the proposed NCD Area and all property owners within 100 feet of the proposed NCD Area, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors. Following such public hearing, the Historical Commission, by majority vote, shall determine whether the proposed NCD would be appropriate under the criteria set forth in Section 3(a). If the Historical Commission so determines that an NCD would be appropriate, it shall convene a Study Committee to investigate and prepare a Report on the appropriateness of such a designation for the proposed NCD Area. The Study Committee shall consist of five members, of which one shall be a designee of the Planning Board; one shall be a designee of the Historical Commission, and three shall be residents of the proposed NCD Area who shall be appointed by the Town Manager. When reasonably possible, the Study Committee should include an architect, landscape architect, or historic preservationist. Notice of a Study Committee's appointment shall be conveyed to all Property Owners in the proposed NCD Area and all property owners within 100 feet of the proposed NCD Area, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors, and such information shall also be made available, to the extent practicable, to prospective buyers through distribution to real estate brokers with offices in Lexington.

(d) The Study Committee, working with residents of the proposed NCD Area, shall meet to evaluate the appropriateness of an NCD designation for the proposed NCD Area, all such meetings being public meetings open to all interested parties. Within one year of its appointment, the Study Committee shall determine, by a supermajority of four positive votes, whether an NCD is appropriate, and shall prepare and file with the Historical Commission and the Planning Board a written Report explaining its decision. If the Study Committee determines that an NCD designation is appropriate, such Report shall propose draft text for the applicable Regulations and Guidelines to be presented to Town Meeting which shall include:

(i) a statement of the significant architectural, aesthetic, cultural, political, economic, social and/or historical qualities of the proposed NCD Area, *or*

(ii) a description of the cohesiveness of the proposed NCD Area in terms of scale, size, type of construction, materials or style or age of its Buildings and Structures, and/or its land use patterns and landscaping; *and*

(iii) a map of the geographic boundaries of the proposed NCD Area, and

(iv) a statement describing the nature of the authority to be vested in the proposed NCD Area's Neighborhood Conservation District Commission, proposed Regulations implementing such authority and proposed Guidelines for the NCD.

(e) A public hearing shall be convened jointly by the Historical Commission and the Planning Board within 60 days after the filing of a completed Report to discuss the Study Committee's findings. Public notice shall be given by publication in a newspaper of general circulation in the Town not less than 14 days before the day of the hearing, by posting such notice in a conspicuous place in the Town Hall for a period of not less than 14 days before the day of such hearing, and by conveying said notice to all Property Owners in the proposed NCD Area and to property owners within 300 feet of the proposed NCD Area, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors. Said notice shall state that the Report is available in the Planning Office and online at the Planning Board and Historical Commission web sites, and that Property Owners in the proposed NCD Area may request a printed copy of the Report at the Planning Office. Said notice shall also include the procedure and expiration date by which any Property Owner can elect, by right, to exclude their property from an NCD designation that may occur through this designation process. All such excluded properties are herein called Opted Out Properties.

(f) Within 30 days of the close of the public hearing, but after the time period for determining Opted Out Properties has expired, the Historical Commission and the Planning Board shall hold a joint meeting to incorporate any changes based upon public input and eliminate properties within the NCD Area from potential NCD inclusion.

If more than 25% of the Properties in the NCD Area (one signature per property) are Opted Out Properties, then the Historical Commission and Planning Board, acting jointly, may at their option, redraw the proposed boundaries of the NCD Area to exclude certain properties if it results in a revised NCD Area that maintains the integrity of the Study findings and contains at least 75 % of non Opted Out Properties. Only if the original or revised NCD Area contains at least 75 % of non Opted Out Properties may the NCD designation go forward. In that case, the Historical Commission and Planning Board, acting jointly, shall vote on a recommendation for NCD designation. If the vote is to not recommend an NCD designation, then the proposed designation shall be deemed rejected.

If an NCD is favorably recommended by the Historical Commission and the Planning Board, acting jointly, they shall prepare a Town Meeting warrant article incorporating the NCD designation, Area, Regulations, and Guidelines, and forward it to the Selectmen for consideration at Town Meeting. A positive majority vote by Town Meeting is required to approve the NCD.

(g) Each NCD, as adopted by Town Meeting, shall identify its specific Regulations and Guidelines, establishing the nature and scope of review authority granted to the corresponding NCD Commission under this Bylaw for activities within the NCD, including, but not limited to, selecting categories and types of Construction or Alteration that are exempt from and/or subject to review.

(h) The establishment of an NCD shall not be construed to prevent the Construction or Alteration of a Building or Structure located in the NCD under a building permit, zoning permit or other municipal approval duly issued prior to the date of that NCD's establishment by the Town Meeting.

(i) Amendments to an NCD (including Regulations and Guidelines and amendments to the boundaries of the affected NCD), may be proposed by 10 Property Owners in the NCD, one signature per property, by the applicable NCD Commission, by the Historical Commission or by the Planning Board. Upon receipt of a written request for any such amendment, the Historical Commission shall hold a public hearing, notifying all Property Owners in the NCD and all property owners within 100 feet of the NCD, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors. Within 30 days of such public hearing, the Historical Commission, by majority vote, shall determine whether the proposed amendments would be appropriate and may, at its option, appoint a Study Committee in the manner described in Section 3(c) to prepare a report with its recommendations. If the Historical Commission deems that the proposed changes are within the scope of the original Study, the Historical Commission shall bring the proposed amendments to Town Meeting for approval by majority vote. If the Historical Commission finds that significant changes are being proposed, the process outlined beginning in Section 3(d) shall then be followed.

(j) The dissolution of an NCD may be proposed by Property Owners in the NCD, one signature per property, that constitute 67% of all Property Owners in the NCD. Upon receipt of a written request for any such dissolution, the Historical Commission shall hold a public hearing, notifying all Property Owners in the NCD, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors. Within 30 days of such public hearing, the Historical Commission, by majority vote, may, at its option, appoint a Study Committee in the manner described in Section 3(c) and shall prepare a report with its recommendations. The Historical Commission shall then forward an NCD bylaw dissolution article to the Selectmen for consideration at Town Meeting for approval by majority vote.

4. NEIGHBORHOOD CONSERVATION DISTRICT COMMISSIONS

(a) Following Town Meeting approval of an NCD designation, and recording of a boundary map of the NCD at the Middlesex South Registry of Deeds, a Neighborhood Conservation District Commission shall be appointed under this bylaw and shall consist of five members and two alternates. One member and one alternate shall be appointed by the Historical Commission and one member shall be appointed by the Planning Board. Three members and one alternate shall be residents of the NCD, to be appointed by the Town Manager. When reasonably possible, the NCD Commission shall include an architect, historic preservationist, and/or landscape architect.

(b) Members and alternates of the NCD Commission shall initially be appointed for staggered terms, and to two-year terms thereafter. Members who are residents of the NCD shall initially be appointed to staggered terms, and to three-year terms thereafter. Each NCD Commission member or alternate may continue to serve in office after the expiration of his or her term until a successor is duly appointed.

5. REVIEW OF CONSTRUCTION AND/OR ALTERATIONS

(a) The Regulations and Guidelines for each NCD shall establish the extent of review required for any Construction and/or Alteration proposed within that NCD.

(b) Except as otherwise provided in this Bylaw or in the Regulations and Guidelines of an NCD, no Building and/or Structure, or its Setting, within a Neighborhood Conservation District shall be Constructed, Demolished or Altered in any way unless the NCD Commission shall first have issued a Certificate of Compatibility, a Certificate of Non-Applicability, or a Certificate of Hardship.

(c) Exemptions from Review:

(i) All of the following categories or types of Construction and/or Alterations shall be exempt from review by the NCD Commission:

- (1) Temporary structures,
- (2) Interior alterations,
- (3) Storm windows, storm doors, and screens,
- (4) Color,
- (5) Accessory Buildings of less than 120 square feet of floor area and less than 10 feet in height,
- (6) Alterations and Exterior Architectural Features that are not visible from a public way or other areas open to public access, including but not limited to, a public street, public way, public park or public body of water,
- (7) The ordinary maintenance, repair or replacement in kind of Exterior Architectural and Landscaping Features and/or changes made to meet requirements deemed by the Building Commissioner to be necessary for public safety because of an unsafe or dangerous condition, or
- (8) Changes explicitly permitted by other laws.

(ii) In addition, the Regulations and Guidelines for an NCD may provide for other categories or types of Construction and/or Alterations within that NCD that shall be exempt from review by its NCD Commission.

(iii) Any Property Owner may request, and the NCD Commission shall issue, a Certificate of Non-Applicability for any Construction and/or Alteration that is exempt from the review of the NCD Commission pursuant to the foregoing.

(d) Review:

(i) All Construction and/or Alteration that is not exempt from review shall be subject to review by the NCD Commission.

(ii) Any person proposing Construction and/or Alteration shall first file an application with the NCD Commission for a Certificate of Compatibility, Certificate of Non-Applicability or Certificate of Hardship, in such form as the NCD Commission may reasonably determine, together with such plans, elevations, specifications, photographs, description of materials, and other information as may be reasonably deemed necessary by the NCD Commission to enable it

to make a determination on the application. The date of the filing of an application shall be the date of the receipt of the completed application by the NCD Commission.

(iii) Following submission of an application deemed complete by the NCD Commission, the chair of the NCD Commission shall determine within 14 days whether the application involves features that are subject to review by the Commission. If the chair of the NCD determines that the application is subject to review, the NCD Commission shall hold a public hearing within 45 days of the original filing date. Public notice of the time, place and purpose of the hearing shall be given at least 14 days prior to the hearing date by publication in a newspaper of general circulation in the Town and by conveying said notice to the applicant and all owners of properties within 100 feet of the property, at the address for such owners as listed in the then current real estate tax list of the Board of Assessors.

(iv) Following the close of the public hearing, the NCD Commission shall determine whether the proposed Construction and/or Alteration is compatible with the Regulations and Guidelines established for that NCD. If the NCD Commission determines that the proposed Construction and/or Alteration is compatible with the general Regulations and Guidelines, it shall issue a Certificate of Compatibility. If the NCD Commission determines that the Construction and/or Alteration is not compatible, the NCD Commission shall provide the applicant with a written statement of the reasons for its disapproval. A Certificate of Hardship may be issued if the NCD Commission determines that, owing to conditions especially affecting the Building or Structure but not affecting the NCD generally, failure to issue a Certificate of Compatibility would result in a substantial hardship to the applicant and that such application may be approved without substantial detriment to the public welfare and without substantial derogation from the intent and purposes of the NCD; provided that upon elimination of the hardship condition, any incompatible Construction or Alteration shall promptly be removed.

(v) If the NCD Commission fails to issue a Certificate or statement of disapproval within 60 days after the filing of the application, or such further time as the applicant may allow in writing, the Certificate shall be deemed granted.

(vi) The NCD Commission shall within seven days file with the Building Commissioner copies of all Certificates issued by it as well as any determinations of disapproval.

(vii) The Regulations and Guidelines for the NCD may provide that certain categories or types of Construction and/or Alteration shall be subject to advisory, non-binding review by the NCD Commission, or an owner may request such non-binding review of an otherwise exempt Construction and/or Alteration, in which event the review procedures shall be followed, but without the NCD Commission voting or rendering a binding determination.

6. DECISION CRITERIA

(a) In passing upon matters before it, the NCD Commission may consider, among other things:

- (i) the architectural, aesthetic, cultural, political, economic, social and/or historical value and significance of the particular Buildings, Structures and/or Settings affected, as well as the effects of the same on the NCD;
- (ii) the suitability of the Construction's, Alterations' and/or Setting's general design, arrangement and composition of its elements on the distinctive character of the NCD; the effect on the cohesiveness of the NCD in terms of scale and massing of the proposed changes relative to nearby Buildings and Structures in the NCD, the type of construction, style, the textures and materials of the features involved in the proposed Construction and/or Alteration;
- (iii) the Setting and landscape characteristics, including their relationship to the street, topography, and existing vegetation, including mature trees, of the particular site involved in the Construction and/or Alteration, as well as the effects of same on the NCD;
- (iv) for demolitions, the Building, Structure and/or Setting proposed to replace that/those existing;
- (v) alterations necessary for handicap accessibility and other conditions of hardship, as contemplated in Section 5(d)(iv); and
- (vi) all such other standards, factors and matters contained in the Regulations and Guidelines for the NCD.

(b) In making its determination, the NCD Commission shall, among other things, allow for appropriate architectural diversity and encourage the compatible updating, expansion and renovation of Buildings and Structures in the NCD consistent with the distinctive characteristics of the NCD.

7. DEMOLITION BY NEGLECT

(a) If the NCD Commission has reason to believe, through visual inspection or other means, that a Building or Structure in the NCD may be undergoing Demolition by Neglect, then the NCD Commission shall notify the Building Commissioner and the Property Owner, and the NCD Commission and the Building Commissioner shall jointly hold a public hearing to determine whether it is undergoing Demolition by Neglect, which shall require the concurrence of the Building Commissioner. In furtherance of determining its condition, the NCD Commission may, at any time, request an inspection of the Building or Structure by the Building Commissioner.

b) If the NCD Commission and the Building Commissioner both determine that the Building or Structure is undergoing Demolition by Neglect, the NCD Commission and the Building Commissioner shall attempt to negotiate a voluntary agreement with the Property Owner for appropriate and timely repairs sufficient to structurally stabilize the Building or Structure and/or prevent further deterioration.

(c) In the event that the NCD Commission and the Building Commissioner both determine that they are not able to negotiate such an agreement with the Property Owner, for any reason, or that the Property Owner has agreed to undertake but has failed to satisfactorily complete such repairs in a timely manner, then the NCD Commission and the Building Commissioner may take such action as is permitted under Section 9, including seeking a court order that specific repairs be undertaken to secure the Building or Structure against the elements, vandals and vermin, to halt further deterioration, and to

stabilize it structurally. The NCD Commission may forbear from commencing an action in court for any reason.

(d) Upon completion of all repairs that have been agreed upon between the Property Owner and the NCD Commission and the Building Commissioner or that have been ordered by the NCD Commission and the Building Commissioner, or that have been ordered by the court, and upon certification by the Building Commissioner that said repairs have been completed, the NCD Commission shall certify that the Building or Structure is no longer undergoing Demolition by Neglect.

8. REVISION OF REGULATIONS AND GUIDELINES

The NCD Commission shall meet periodically with the Property Owners in the NCD for the purpose of determining whether the NDC Regulations and Guidelines are still appropriate. The first of these meetings shall occur three years from the date of the District's designation as an NCD, and shall occur at no less than seven year intervals thereafter.

9. JUDICIAL REVIEW, ENFORCEMENT AND LAPSE

(a) The Building Commissioner shall be charged with the enforcement of this Bylaw. The Building Commissioner is authorized to institute any and all proceedings in law or equity as he deems necessary and appropriate to obtain compliance with the requirements of this by law, or to prevent violation thereof.

(b) Anyone found in violation may be fined not more than \$500 for each day such violation continues, each day constituting a separate offense. In addition, no building permit shall be issued with respect to any premises upon which a Building or Structure subject to the provisions of this bylaw has been voluntarily altered or demolished in violation of this bylaw for a period of two years after the date of the completion of such demolition or Alteration or the date by which the Historical Commission and the Building Commissioner both have determined that a building is undergoing demolition by neglect, whichever date is later, except pursuant to the issuance of a building permit pursuant to an agreement reached under Section 5(e), or as otherwise agreed to by the Historical Commission and the Building Commissioner. As used herein "premises" includes the parcel of land upon which the demolished Building or Structure was or is located.

(c) Any party aggrieved by a determination of the NCD Commission may, within 45 days after the filing of the notice of such determination with the Building Commissioner file a written request with the NCD Commission for a review by a joint meeting of the Historical Commission and Planning Board. The findings of this joint meeting, which may sustain or overrule the prior decision of the NCD Commission, shall be filed with the Building Commissioner within 45 days after the close of the public hearing, and shall be binding on the applicant and the joint committee, unless a further appeal is sought in the Superior Court of Middlesex County.

(d) Certificates of Compatibility and Certificates of Hardship shall expire in 18 months, plus such time as may be required to pursue or await the determination of a judicial review as provided above, from their date of issuance, if construction has not begun by such date. Notwithstanding the above, the NCD Commission may grant one or more extensions, of up to six months each, if there are unavoidable delays.

10. EXISTING BYLAWS NOT REPEALED

(a) Nothing contained in this bylaw shall be construed as repealing or modifying any existing bylaw or regulation of the Town, but it shall be in addition thereto. If this bylaw imposes greater restrictions upon the Construction and/or Alteration, of Buildings, Structures or Settings than other bylaws or provisions of law, such greater restrictions shall prevail. In cases of proposed demolition, NCDs shall be construed as “historic districts” under the provisions of Section 19.1 of the General Bylaws and jurisdiction of such proposed activities will be overseen by the respective NCD Commission and not by the Historical Commission.